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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/702,198	11/04/2003	Victor Lee Walker	08168-053001	7120
20985	7590	02/17/2005	EXAMINER	
FISH & RICHARDSON, PC 12390 EL CAMINO REAL SAN DIEGO, CA 92130-2081			MITCHELL, KATHERINE W	
			ART UNIT	PAPER NUMBER

3677

DATE MAILED: 02/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/702,198	Applicant(s) WALKER ET AL.	
	Examiner Katherine W. Mitchell	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 1-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attach/Int(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of claims 13-15 in the reply filed on 12/6/2004 is acknowledged.
2. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Specification

3. The abstract of the disclosure is objected to because it is over 150 words long and contains a misspelling. Correction is required. See MPEP § 608.01(b).

In line 5, "axes" should be —axis—.

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Drawings

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4. The nine (9) pages of replacement formal drawings filed 12/6/2004 are accepted and have been entered.

Claim Objections

5. Claim 13 is objected to because of the following informalities:

- Line 4 describes 4 convex sidewalls connecting 2 of the concave corners.

Examiner is not sure how 4 sidewalls connect 2 corners.

- "the center of the opposing side walls" lacks clear antecedent basis for both "the center" and "opposing" sidewalls. Also, "opposing" concave corners lacks clear antecedent basis. Appropriate correction is required.

6. Claim 15 is objected to because of the following informalities: "the center of the top edge" lacks clear antecedent basis. Examiner has no way to determine what is the center of the top edge and is considering any point to be the center between some points.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

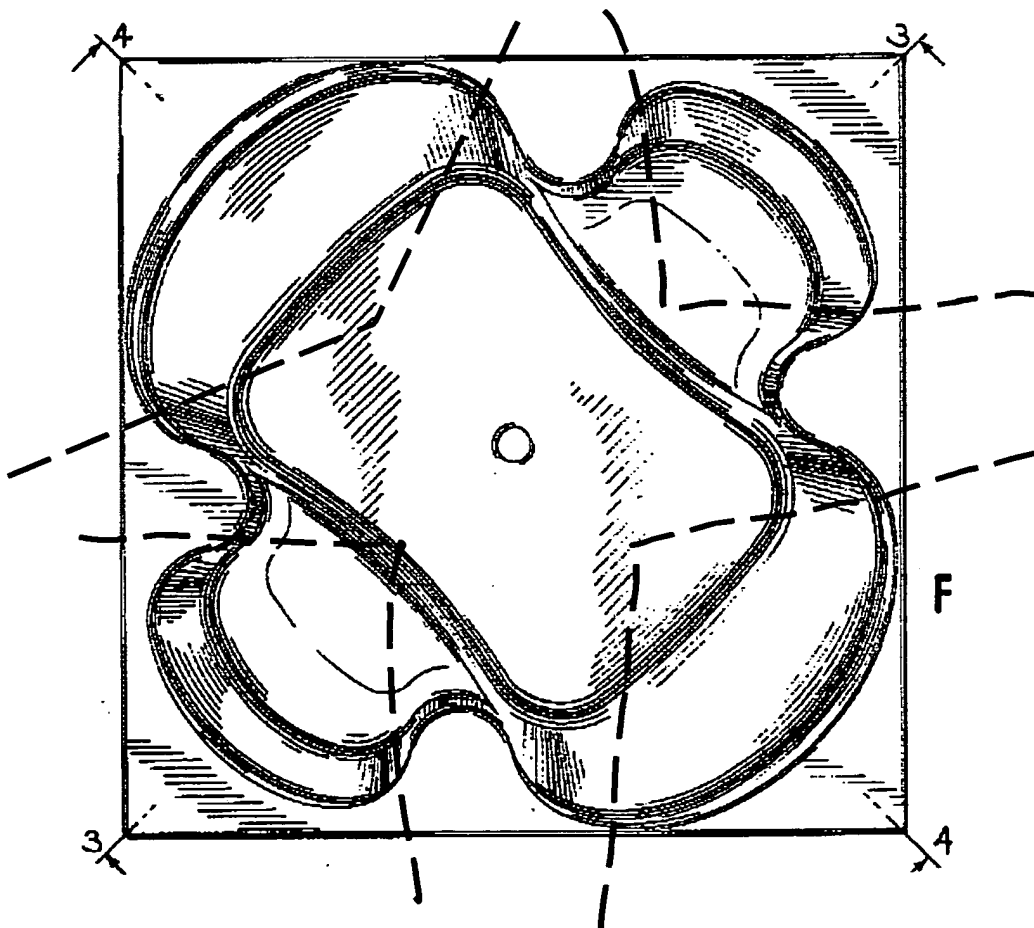
8. Claim 13 is rejected under 35 U.S.C. 102(b) as being anticipated by Kohler, Jr Des.280342, hereafter called Kohler. Kohler teaches a curvilinear spa shell comprising:

- a top edge defining 4 rounded concave corners (see marked up Fig 2 below—4 corners are marked off by examiner in dashed lines) each having a radius that

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exceeds 12 inches (inherent, as the smaller opposed corners clearly are formed as seats, and a drain is also shown to give proportions clearly in excess of 12" radius for each curved corner) and

- four convex side walls connecting two of the concave corners (between areas marked off as dashed lines by examiner) Note that examiner is considering the claim to read —each wall connecting two of the concave corners— to make sense.
- Wherein the top edge is substantially symmetrical about an axis through the center of opposing side walls (inherent in the figure shown)
- Wherein the top edge is substantially symmetrical about an axis through the center of opposing side walls (inherent in the figure shown)



Re claim 14: The drainhole shown is considered a water feature, as water drains through it.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kohler in view of DeSousa et al, USP 4637873, hereafter called DeSousa. As discussed above, Kohler teaches all the elements except a filter section extending from one sidewall between 2 corners toward the center of the top edge. DeSousa teaches a spa with a filter in the sidewall between two corners in the abstract. The filter section (10 with 96) extends up toward the top edge. Therefore, it would have been obvious to one of ordinary skill in the art, having the teachings of Kohler and DeSousa before him at the time the invention was made, to modify Kohler as taught by DeSousa to include the filter of DeSousa, in order to obtain clean water in the spa (col 1 lines 12-48). One would have been motivated to make such a combination because a more user-accepted device would have been obtained, as bathers do not like sitting in water that is visibly dirty, and the filter would trap particle that could damage any auxiliary equipment such as pumps and jets, which are frequently used on spas. One would install the filter in the

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sidewalls rather than the corners, as bathers sit in the corners, and would not want the filter unit located directly adjacent the bather.

Conclusion

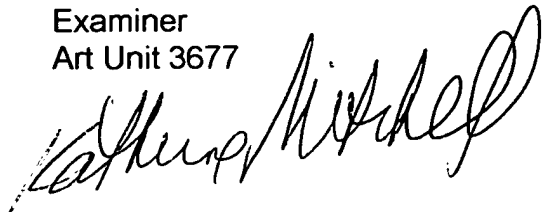
11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katherine W. Mitchell whose telephone number is 703-305-6713. The examiner can normally be reached on Mon - Thurs 10 AM - 8 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Katherine W Mitchell
Examiner
Art Unit 3677



Kwm
2/12/2005